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## TECHNOLOGY

# Computer matching stirs up criticism

*Is it valid auditing tool or invasion of privacy?*

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**A**mericans in growing numbers are being accused — some falsely — of wrongdoing as a result of computerized investigations by government agencies that take place without their knowledge.

Federal agencies in the last few years have dramatically stepped up the practice of matching records from among their more than 8,000 different groups of records on millions of individuals — most frequently to identify recipients of federal programs who may be defrauding the government. The practice is increasing even more rapidly at the state level.

While proponents of matching claim the technique is necessary to identify fraudulent or erroneous payments, critics are concerned that the practice is undermining basic legal rights and may be creating a nation of suspects.

John Shattuck, a vice president of Harvard University and former head of the Washington office of the American Civil Liberties Union, said in a recent interview that computer matching, with its potential for use in what he called "fishing expeditions," appears to violate the Fourth Amendment, which prohibits unreasonable search and seizure.

Gary T. Marx, a sociology professor at MIT, along with Shattuck and others, fears that computer matching is turning the investigative process on its head. Traditionally, Marx explained, when government agents suspected an individual of questionable payments — for which the wrongdoing, they would investigate that computers are coded. In the past, he noted, individual. But with the burgeoning technology of computer matching, reels of magnetic tape are matched against each other — and the resultant "hits" generate lists of suspects.

As a result, the computer match targets not individual suspects, but entire categories of people. "What makes matching fundamentally different from a traditional investigation," Shattuck said, "is that its purpose is to generate the evidence of wrongdoing required before an investigation can begin."

### Constitutional question

Shattuck explained that the freedom from unreasonable search is one of the clearest and least ambiguous constitutional legal principles.

"The Fourth Amendment was a bedrock of the Constitution," he said. "It grew out of complaints about arbitrary searches by the British. It was barely debated at the Constitutional Convention. But computer matching erodes the most important principle governing the collection and use of personal information by the government: the right of an individual to control his own information and prevent its use without his consent."

Other critics point out that computer matching undermines the traditional presumption of innocence, imposing a continuing burden on people to prove they are innocent of wrongdoing.

Moreover, they contend, agency decisions based on matches can deprive people of due process of law — in that they are scrutinized without their knowledge and often subject to a cutoff of benefits without presenting their side of the case.

(A 1982 Massachusetts match of welfare recipients' bank accounts ordered by then Gov. Edward J. King identified about 600 people with larger bank accounts than was allowed by regulations. As a result, about 160 — nearly 27 percent of those matched — received termination notices. But, according to Allan Rodgers of the Massachusetts Law Reform Institute, 19 percent, more than 110, were later found to have been misidentified, and more were cleared when subsequent fact-finding sessions exonerated them.)

But Richard P. Kusserow, inspector general of the US Department of Health and Human Services, and others argue that the computerization of records poses no threat to personal privacy.

Kusserow, who sees a much greater threat from unauthorized people having access to personal files, contends that personal information is better protected today because auditors see only specific irregularities — such as double billing or payment of questionable payments — for which the wrongdoing, they would investigate that computers are coded. In the past, he noted, individual. But with the burgeoning technology of computer matching, reels of magnetic tape are matched against each other — and the resultant "hits" generate lists of suspects.

"Part of what makes civil libertarians uncomfortable," said Kusserow in a telephone interview, "is simply that they,

like many other people, are frightened of new computer technology."

Kusserow also maintains that if individuals are denied benefits solely a result of a match, such abuses reflect flaws in the investigative procedures — not the technology.

### "Auditing, not investigative, tool"

Kusserow insists that computer matching is an auditing, not an investigative, tool. "If, in conducting an audit, we find, for example, unallowable expenditures, then we flag those records for further investigation," he says.

Kusserow, who is a chairman of the President's Council on Integrity and Efficiency, which is composed of inspectors-general from the various agencies, defends the effectiveness of computer matches in helping administer HHS, whose expenditures represent 38 percent of the federal budget. "The ACLU fails to note that nothing has changed but our methodology," he says.

But others in the administration are less sanguine than Kusserow. One highly ranked official, who asked not to be identified, reflected: "We've accumulated a magnificent federal employee data base. We know who they are, their income, where they live. What we're doing is purifying the federal work force by matching it against anything conceivable to ensure integrity of each civil servant. We're matching them against lists of unpaid government loans of all kinds and lists on entitlement programs."

"It's probably legitimate. But I don't know where it's going to stop," the official added. "At what point do you stop looking through files and comparing them with others?" The arguments of Kusserow and other proponents of matching, he continued, "don't get around the Fourth Amendment problem."

There are no reliable figures on the number of computer matches, but observers estimate the federal government has run more than 500 matches involving millions of people. In one matching program alone, the Treasury Department each year compares some 50 million names and vehicle registrations of travelers against files of the FBI, CIA, IRS and other agencies. At the state level, the number of matches has passed 1,500, according to the US General Accounting Office.

A central criticism of computer matching revolves around the Privacy Act of 1974. In that legislation, Congress prohibited agencies from exchanging personal records without consent of the individuals for any but "routine uses."

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But over the past few years, agencies have expanded their definition of "routine use." In 1982, the Office of Management and Budget told the agencies to decide themselves what constitutes "routine use." The 1982 OMB guidelines significantly cut back on reporting and disclosure requirements, according to a Congressional Research Service analysis.

Shattuck recently identified a number of instances in which agency files are used for "nonroutine" use:

- The Parent Locator Service allows child-support enforcement officials to search all government and private systems to learn the whereabouts and financial situations of delinquent parents.

- Many states allow public and private employers to use criminal-history data banks, compiled originally only for police use, to screen job applicants. (Massachusetts does not.)

- IRS records are used to screen prospective jurors and to locate nonregistrants for the draft.

Shattuck argues that, while the goals of these matches may be laudable, they depend on using private information in ways people did not expect when they gave such information to agencies.

The Privacy Act also required agencies to notify any individual if his or her records were subjected to special scrutiny, such as a computer match. But both the OMB and the agencies take the position that individuals are notified by an umbrella warning to anyone who applies for a federal benefit program that their records are subject to agency scrutiny.

In practice, said Ronald Plessner, former counsel to the now defunct US Privacy Protection Commission: "There is no notice to recipients about computer matching programs."

While Congress directed the OMB to oversee privacy protection and to ensure that agencies comply with the Privacy Act, the GAO, in a report published two months ago, concluded that "privacy oversight... is unclear, fragmented or nonexistent."

The GAO's report echoed the 1983 findings of a congressional committee that "OMB does not conduct any active supervision or review of agency Privacy Act regulations... OMB does not monitor agency compliance with computer matching guidelines."

### Other sources of matching

Nor is computer matching limited to federal records. There are numerous stories of agencies matching files against bank records, subscription lists, receipts and other private records.

The IRS has compared lists of subscribers to Fortune magazine and those on mailing lists for catalogs from such luxury stores as Nieman-Marcus to names of people who live in relatively inexpensive homes. If a person on the lists is found to live in an area of lower house prices, the IRS may investigate him for underpayment of taxes.

The Selective Service reportedly tried to get a list of children's birthdays from an ice cream firm that used them for promotions until the company refused, according to a source.

Last month, Mother Jones magazine reported that the FBI periodically scrutinizes membership files and photographs of the Automobile Association of America.

Several years ago, critics defeated a proposal made during the Carter administration to create a national data bank. But, according to Shattuck, "unregulated computer matching at all levels of government has created a de facto national data bank."

Fred Wood, who is heading a study by the Office of Technology Assessment on the impact of government's use of new information technologies, said in a recent telephone interview: "There appears to be an explosion of computer matching." Speaking of the potential for abuses of individual privacy, Wood said:

"Neither Congress nor the country has engaged those issues. It is reasonable to be concerned what about would happen if these techniques were used by [the late Sen. Joseph] McCarthy or J. Edgar Hoover. Even though officials swear they'll never resort to such abuses, history shows that these things happen."